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Preparatory Commission for the International Criminal Court
Working Group on an Agreement on the Privileges and Immunities of the International Criminal Court
New York
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Draft agreement on the privileges and immunities of the Court

Discussion paper proposed by the Coordinator on articles 17 and 19 in PCNICC/2001/L.1/Rev.1/Add.3

Article 17
Witnesses and victims[1]

1. Witnesses and victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court for purposes of giving evidence,[2] including the time spent on journeys in connection with their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them [in the course of] [in connection with] their testimony, which immunity shall continue to be accorded even after their appearance and testimony before the Court;

(c) Inviolability of documents, papers and materials relating to their testimony;

[1] In order to clarify that the immunity granted is purely functional, the words "for their appearance in Court for purposes of giving evidence" have been inserted wherever appropriate.

[2] The Working Group will have to consider whether the phrase "for purposes of giving evidence" is too limiting for victims who may not necessarily appear before the Court to give evidence, but appear as *parties civiles* or in order to make statements at the pre-trial and sentencing stages.

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(d) The right to receive and send papers or correspondence relating to their testimony by courier or in sealed bags and to receive and send electronic communications relating to their testimony;

(e) Exemption from immigration restrictions or alien registration[3] [when they travel to and from the Court for purposes of their testimony];

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of counsel, or persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence, concerned.

2. Witnesses and victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 18[4]
Experts and other persons required to be present at the seat of the Court

1. Experts and other persons required to be present at the seat of the Court shall, to the extent necessary for their testimony or the performance of their necessary functions[5] for the Court, including the time spent on journeys in connection with their appearance or the performance of their functions, be accorded the privileges, immunities and facilities provided for in article 16, subparagraphs (a) to (f), of the present Agreement, subject to the production of the document referred to in paragraph 3 of this article.

2. Experts and other persons required to be present at the seat of the Court shall be accorded repatriation facilities in time of international crisis.[6]

3. Experts and other persons required to be present at the seat of the Court shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.[7]

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[3] It will be recalled that the need for or applicability of this exemption was questioned. The words in brackets may serve to clarify that the exemption will only apply when witnesses and victims travel to and from the Court for purposes of evidence.

[4] This article does not replace article 18 in PCNICC/2001/L.1/Rev.1/Add.3. The articles will need to be renumbered.

[5] The understanding is that in addition to experts who will be giving evidence, the Court will make use of other experts (i.e. in information technology) who need to be covered as well.

[6] See PCNICC/2001/L.1/Rev.1/Add.3, article 17, para. 2.

[7] See PCNICC/2001/L.1/Rev.1/Add.3, article 17, para. 3.

Article 19[8]
Experts on mission[9]

1. Experts performing missions for the Court shall be accorded the following privileges, immunities and facilities [as are necessary] [to the extend necessary] for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions, subject to the production of the document referred to in paragraph 2 of this article:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of the performance of their mission, which immunity shall continue to be accorded even after they have ceased to be employed on missions for the Court;

(c) Inviolability of documents, records[10] and materials relating to their missions;

(d) For the purposes of their communications with the Court, the right to receive and send papers, correspondence or other materials by courier or in sealed bags and to receive and send electronic communications;

(e) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(f) The same facilities in respect of currency and exchange as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention.

2. Experts on mission who enjoy the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that they are on a mission for the Court and a time period for which such a mission will last.

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[8] This article does not replace article 19 in PCNICC/2001/L.1/Rev.1/Add.3. The articles will need to be renumbered.

[9] See Convention on the Privileges and Immunities of the United Nations, article VI, sections 22 and 23; Protocol on the Privileges and Immunities of the International Seabed Authority, article 9; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, articles 15 and 17; Convention on the Privileges and Immunities of the Specialized Agencies, Annexes II (FAO), III (ICAO), IV (UNESCO), VII (WHO), XII (IMO), XV (WIPO), XVI (IFAD), and XVII (UNIDO).

[10] It will be recalled that there is a need to also cover computer files and databases; thus the word "records" was inserted.

Article XX[11]
Waiver of privileges and immunities

1. The privileges and immunities provided for in articles __ to __ of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case where they can be waived without prejudice to the purpose for which they are accorded.

2. The privileges and immunities may be waived:

(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) In the case of the Registrar, by the Presidency of the Court;

(c) In the case of the Deputy Prosecutor and the staff of the Office of the Prosecutor, by the Prosecutor;

(d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(e) In the case of counsel, by ...;

(f) In the case of personnel recruited locally and assigned to hourly rates, by [the Presidency] [the Prosecutor] [the Registrar];

(g) In the case of witnesses and victims, by ...;

(h) In the case of experts and other persons required to be present at the seat of the Court, by ...;

(i) In the case of experts on mission, by the head of the organ of the Court employing the expert if, in the opinion of the head of the organ, the expert's immunity would impede the course of justice and the immunity can be waived without prejudice to the interests of the Court.

[11] This article will be numbered as appropriate.